

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.11644 of 2000

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Dated: October 3, 2007
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Between:

D. Laxmaiah, S/o. Veeraiah, age: 48 years,
Occ: Business, R/o. Challa Sasmudram,
Yellandu Road, Khammam District.

... Petitioner

And

The Assistant Divisional Engineer,
A.P. Transco, Yellandu, Khammam District,
And others.

... Respondents

Order:

This writ petition has been filed questioning the validity of the order dated 16-05-2000 passed by the third respondent, Chief Engineer, A.P. Transco, Warangal District, in proceedings No.CEW/Civil/AE/CM/F.Docket/D.No.641/00, confirming the final assessment order passed by the second respondent, Superintending Engineer, Assessments, Hyderabad.

2. Petitioner, who is the proprietor of Sri Kotamaheshwara Rice and Flour Mill situated at Challa Samudram, Khammam District, was availing electric supply to his Mill from the erstwhile A.P. State Electricity Board; vide service connection No.16 under L.T. category-III. Supply of energy was governed by the terms and conditions of supply framed under Section 49 of the Electricity Supply Act, 1948 ('the Act' for brevity). Petitioner's service connection was inspected by the Divisional Engineer on 12-07-1994 and certain incriminating points were noticed, namely:

- “1. The meter body seal bits are hanging and easily came out from the sealing wire from one side of the bit and the screw are found loose.
2. The consumption recorded is not proportionate to the connected load.
3. The mill is a trading mill. The consumer pilfered Electrical energy by tampering the meter body seals.”

3. Subsequently, a case of pilferage of energy was registered against the petitioner and provisional assessment order was passed on 25-07-1994 assessing the loss of energy on account of pilferage at Rs.72,410/- and power supply to the petitioner was ordered to be disconnected. Questioning the same, petitioner filed an application before the District Consumer Forum and obtained interim orders for restoration of power supply on his paying Rs.25,000/-. Subsequently, final orders were passed by the District Consumer Forum rejecting the application of the petitioner in view of availability of alternative remedy of appeal against the provisional assessment order, before the Chief Engineer, as per the terms and conditions of supply.

4. Thereafter, the Superintending Engineer passed final assessment orders on 27-02-1999 confirming the loss sustained by the Board on account of pilferage at Rs.71,525/- in addition to Rs.150/- towards supervision charges. The loss sustained on account of pilferage has been modified by the Superintending Engineer taking into account the connected load of 20 H.P. and the load factor at 8 working hours a day. Against the order dated 27-02-1999, petitioner preferred an appeal before the third respondent, Chief Engineer. The appellate authority, while considering the plea of the petitioner with regard to less consumption of energy during the years 1991-1993 and also subsequent periods, assessed loss of energy by adopting 6 working hours a day with 0.8 load factor utilization of 20 HP mill being run by the petitioner, and arrived at loss of energy at Rs.35,045/-.

5. Heard learned counsel for the petitioner, Mr. P. Prabhakar Reddy and learned Standing Counsel, Sri O. Manohar Reddy, for the respondents.

6. Learned counsel for the petitioner submits that petitioner has not resorted to pilferage of energy at all and the primary authority as well as the appellate authority has assessed the loss of energy without proper opportunity to the petitioner.

7. On the other hand, learned Standing Counsel for the respondents submits that in view of the allegations and incriminating points noted during the inspection, it is a clear case of malpractice indulged by the petitioner by pilfering energy. He further submits that the appellate authority has considered the case of the petitioner very sympathetically by reducing the working hours arrived at by the primary authority and granted substantial relief to the petitioner, and

there is no illegality in the order passed by the primary and appellate authorities.

8. With regard to the plea of the petitioner that he has not resorted to pilferage of energy, it is to be noted that during inspection, it was noticed that the meter body seal bits were found hanging and were easily coming out from one side of the bit and the screws were also found loose. During the inspection, it was also found that consumption recorded is not proportionate to the connected load. In view of the said allegations, a case of pilferage of energy was registered. In the light of the incriminating points noted during the inspection, there appears no reason at all for not believing the version of the inspecting authority, based on which the primary and appellate authorities came to the conclusion that petitioner has pilfered energy. Even with regard to the allegation of the petitioner that no opportunity has been provided to him, it is to be noted that the final assessing authority has given a show cause notice to the petitioner and the representation filed by the petitioner was received in the office of the Superintending Engineer on 01-12-1997 and considering the same, the primary authority has passed final orders of assessment. Even the appeal filed by the petitioner before the appellate authority was disposed of after hearing the petitioner. In that view of the matter, it cannot be said that no opportunity was given to the petitioner. Further, taking into account the consumption of power in the earlier period prior to the date of inspection, the appellate authority has considered the case of the petitioner sympathetically and granted substantial relief to the petitioner by adopting the number of working hours at 6 a day, which is just and reasonable. Hence, I do not find any illegality in the orders of the primary as well as the appellate authority, warranting interference of this court under Article 226 of the Constitution of India.

9. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY.

October 3, 2007

MRR